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NIKE GLOBAL TRADING BV, SINGAPORE BRANCH v. PEMUNGUT DUTI SETEM, MALAYSIA

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
AZIMAH OMAR JCA
B AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NO: W-01(A)-623-11-2023]
4 SEPTEMBER 2025

C **Abstract** – *A novation does not transfer property, but completely extinguishes an existing contract, creating in its place an entirely new agreement among the parties. Novation requires the consent of all parties involved including the original contracting parties and the incoming party. Hence, novation is distinct from a transfer and an assignment.* D *Consideration for novation does not need to be monetary. It can validly consist of parties' mutual promises, such as the agreement to release one party from prior obligation. As such, a novation agreement does not fall within s. 16(1) of the Stamp Act 1949 and is not subject to a duty under Item 32(a) of the First Schedule of the Stamp Act 1949.*

E ***CONTRACT:*** *Agreement – Novation agreement – Effect of – Whether extinguishes existing contractual relationship and creates entirely new and independent agreement by consent – Whether extinguishes rights and obligations under old contract – Whether parties substituted – Whether there was transfer or conveyance of property – Whether mutual discharge and assumption of obligation constituted* F *valid consideration – Stamp Act 1949, s. 16(1)*

REVENUE LAW: *Stamp duty – Assessment – Challenge against assessment – Novation agreement – Whether true novation – Whether original loan agreement extinguished – Whether created entirely new and independent agreement by consent* G *– Whether novation agreement fell under s. 16(1) and Item 32(a) of First Schedule of Stamp Act 1949 ('Act') – Whether novation agreement ought to be stamped under Item 4 of First Schedule of Act*

NIKE European Operations Netherlands BV ('NEON') and NIKE Sales (Malaysia) Sdn Bhd ('NIKE Malaysia') entered into an intercompany loan H agreement ('original loan agreement'), under which NEON agreed to lend up to RM41,257,000 to NIKE Malaysia. The full loan amount was disbursed and was due for repayment five years later. Subsequently, NEON, NIKE Malaysia, and the appellant entered into a novation agreement ('novation agreement'). Based on the novation agreement, all rights, obligations, duties and liabilities under the original loan agreement were to be transferred from I

NEON to the appellant. The novation agreement was presented to the respondent for the adjudication of stamp duty and the respondent assessed a stamp duty of RM1,716,004. Dissatisfied with the assessment, the appellant filed an objection under s. 38A of the Stamp Act 1949 ('Act'). The respondent rejected the objection and maintained the original assessment. Dissatisfied, the appellant appealed to the High Court. The High Court dismissed the appeal and hence, this appeal. The issue for determination in this appeal was whether the novation agreement was chargeable under sub-s. 16(1) of the Act, read together with item 32(a) of the First Schedule of the Act, *ie*, whether the novation agreement extinguished the original obligations (a novation) or transferred a debt (an assignment).

Held (allowing appeal with costs)
Per Ahmad Kamal Md Shahid JCA delivering the judgment of the court:

(1) Section 63 of the Contracts Act 1950 clearly states that a novation does not transfer property. The novation operates by extinguishing the existing contractual relationship, creating in its place, an entirely new and independent agreement by consent. Hence, a novation agreement extinguishes rights and obligations under an old contract for which the new contract is made. Novation requires the consent of all parties involved, including the original contracting parties' and the incoming party, and results in the complete discharge of one of the original parties from the original contract. Therefore, novation is distinct from a transfer and an assignment. (paras 18 & 19)

(2) While contractual rights can generally be assigned from one party to another, obligations and liabilities cannot be assigned or transferred without the express consent of all original parties. The terms of the novation agreement demonstrated that the appellant did not merely acquire rights to receive repayments. Instead, it assumed active, ongoing obligations originally borne by NEON. The novation agreement was substantively a substitution of parties, carrying forward existing obligations and rights rather than transferring property or debts alone. It was strictly a novation – fully extinguishing the original loan agreement and creating an entirely new contractual arrangement between the appellant and NIKE Malaysia. It could not amount to an assignment, conveyance or transfer of property in law. (paras 23-25 & 27)

(3) The mere presence of the term 'transfer' in isolation could not override the substantive legal character of the agreement as a novation. The fact that NIKE Malaysia owed repayment of the loan to the appellant rather than to NEON, did not imply a transfer or conveyance of property. As

A no property transfer or conveyance occurred, sub-s. 16(1) of the Act was plainly inapplicable. Further, consideration in a novation agreement arises from the mutual discharge and assumption of obligation. The mutual agreement to release NEON and substitute the appellant was a valid consideration. (paras 29, 30 & 38)

B **(4)** The novation agreement, being a true novation that extinguished the original loan agreement and substituted the appellant in place of NEON, did not fall within sub-s. 16(1) of the Act and Item 32(a) of the First Schedule of the Act. The respondent was directed to stamp the novation agreement under Item 4 of the First Schedule of the Act. (paras 40 & 41)

C **Case(s) referred to:**

ALH Group Property Holdings Pty Ltd v. Chief Commissioner of State Revenue [2012] HCA 6 ***(refd)***

Allchin v. Revenue and Customs Comrs [2013] UKFTT 1998 ***(refd)***

Arab-Malaysian Merchant Bank Bhd v. Silver Concept Sdn Bhd [2008] 9 CLJ 522 HC ***(refd)***

D *BASF Services (M) Sdn Bhd v. Pemungut Duti Setem [2010] 5 CLJ 109 FC* ***(refd)***

Danaharta Managers Sdn Bhd v. Melewar Leisure Sdn Bhd & Ors [2008] CLJU 200; [2008] 1 LNS 200 HC ***(refd)***

Housing And Development Board v. Lee Sem Yoong Sdn Bhd [1987] CLJU 30; [1987] 1 LNS 30 SC ***(refd)***

E *Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait) [2022] 2 All ER 911* ***(refd)***

LYL Hooker Sdn Bhd v. Tevanaigam Savisthri KT Chitty & Anor [1987] 1 CLJ 356; [1987] CLJ (Rep) 179 SC ***(refd)***

Pemungut Duti Setem Malaysia v. Perbadanan Pembangunan Pulau Pinang [2024] 8 CLJ 322 CA ***(refd)***

Resolution Alliance Sdn Bhd v. Binabaik Sdn Bhd & Anor [2015] 5 CLJ 813 CA ***(refd)***

F *Teoh Kee Keong v. Tambun Mining Co Ltd [1968] 1 MLJ 39* ***(dist)***

Legislation referred to:

Contracts Act 1950, ss. 2(d), 63

Stamp Act 1949, ss. 16(1), (3), 38A, First Schedule, items 4, 32(a)

G *For the appellant - Jason Liang, Ng Anlynn & Tan Wen Ying; M/s Wong & Partners*

For the respondent - Normareza Mat Rejab; SRC & Syazana Safiah Rozman; RC; Inland Revenue Board of Malaysia

[Editor's note: For the High Court judgment, please see Nike Global Trading BV, Singapore Branch v. Pemungut Duti Setem, Malaysia [2025] 1 CLJ 174 (overruled).]

H *Reported by S Barathi*

I

JUDGMENT

Ahmad Kamal Md Shahid JCA:

Introduction

[1] This is an appeal by Nike Global Trading BV, Singapore Branch *ie*, the plaintiff in the High Court (the appellant), against the decision of the learned High Court Judge (HCJ) given on 6 November 2023 in dismissing the plaintiff's appeal against the assessment of stamp duty (*ad valorem* duty) raised by the Pemungut Duti Setem, Malaysia (the respondent).

[2] We heard the appeal on 19 May 2025 and reserved the same for decision. Having heard the appeals, examined the appeal records and considered the submissions by the parties, we decided to allow the appellant's appeal. This is now the full grounds for our decision.

Background Facts

[3] On 1 May 2021, NIKE European Operations Netherlands BV (NEON) and NIKE Sales (Malaysia) Sdn Bhd (NIKE Malaysia) entered into an intercompany loan agreement (original loan agreement), under which NEON agreed to lend up to RM41,257,000 to NIKE Malaysia. The full loan amount was disbursed and was due for repayment five years later.

[4] On 17 December 2021, NEON, NIKE Malaysia, and the appellant entered into a novation agreement dated 17 December 2021 (the novation agreement). Based on the novation agreement, all rights, obligations, duties and liabilities under the original loan agreement are to be transferred from NEON to the appellant. Notably, all parties involved in the novation agreement belong to the same corporate group.

[5] The novation agreement was presented to the respondent through an online system, namely Stamp Assessment and Payment System (STAMPS), for the adjudication of stamp duty on 21 January 2022. Upon submission of the novation agreement for stamping, the respondent assessed a stamp duty of RM1,716,004 on the novation agreement.

[6] Dissatisfied with the assessment, the appellant filed an objection under s. 38A of the Stamp Act 1949 (the Act) on 18 March 2022. The respondent rejected the objection on 9 June 2022, maintaining the original assessment.

In The High Court

[7] Dissatisfied with the decision, the appellant appealed against it to the High Court. As mentioned before, the learned HCJ dismissed the appellant's appeal on the grounds which can be gleaned from the following paragraphs:

> [16] Upon the original lender fulfilling its obligation under the loan agreement by disbursing the loan, the purpose of the novation agreement is the transfer of the original lender's right to the plaintiff which is the

A right of repayment of the debt. Since the debt was transferred to the plaintiff, *albeit*, without monetary consideration, is chargeable under Item 32(a) of the First Schedule as if it was a transfer or conveyance on sale by virtue of section 16(1).

...

B [18] Hence, I agree with the Collector that there is a transfer or conveyance of a property that arises from the novation agreement which attracts stamp duty under Item 32(a) of the First Schedule.

[8] In gist, the learned HCJ dismissed the appellant's appeal on the following grounds:

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(i) the learned judge referred to the Federal Court decision in *Teoh Kee Keong v. Tambun Mining Co Ltd* [1968] 1 MLJ 39; [1967] 1 MLRA 196 (*Tambun Mining*) and concluded that novation is in effect a form of assignment;

D (ii) the High Court found that NEON had fully discharged its obligations under the original loan agreement by disbursing the loan. Therefore, the purpose of the novation agreement is to transfer the original lender's right to the appellant, which is the right of repayment of the debt; and

(iii) since the debt was transferred to the appellant without monetary E consideration, it is chargeable under Item 32(a) of the First Schedule of the Act as if it were a transfer or conveyance on sale under sub-s. 16(1) of the Act.

[9] Dissatisfied with the decision of the learned HCJ, the appellant filed this present appeal before us.

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The Appeal

[10] Basically, the appellant submitted that under settled Malaysian Law, particularly s. 63 of the Contracts Act 1950, a novation does not transfer property. Instead, it completely extinguishes an existing contract, creating in G its place an entirely new agreement among the parties. Because there is no transfer or conveyance of property, s. 16 of the Act and item 32(a) of the First Schedule of the Act, which impose stamp duty specifically on instruments transferring property, do not apply.

[11] Consequently, since the novation agreement is not explicitly covered H under any specific stamp duty item in the Act, the correct assessment must be the nominal duty of RM10 under item 4 of the First Schedule of the Act.

[12] The respondent, on the other hand, submitted that:

(i) the novation agreement had dearly transferred the rights to receive the I repayment of debt from the original lender, *ie*, NEON, to the appellant;

(ii) the transfer of the debt was without any consideration, whilst substantial benefit had been conferred on the appellant. The transfer was thus deemed to have been made without valuable consideration and was deemed to operate as a voluntary conveyance *inter vivos* within the meaning of sub-ss. 16(1) and (3) of the Act; and

(iii) since the novation agreement had effectively transferred the debt, which is a form of property under the Act, this attracts the application of sub-s. 16(1) of the Act, and effectively renders the instrument to be chargeable under item 32(a) of the First Schedule of the Act.

Our Findings

[13] After evaluating the submissions by both parties, we find that the main issue for determination by this court is "whether the novation agreement is chargeable under sub-s. 16(1) of the Act, read together with item 32(a) of the First Schedule of the Act?".

[14] In short, this court must decide whether the novation agreement extinguished the original obligations (a novation) or transferred a debt (an assignment).

[15] To determine whether any and what stamp duty is chargeable upon an instrument, the real and true meaning of the instrument is to be ascertained. The description given by the parties in the instrument itself is immaterial. This was stated by the Federal Court in *BASF Services (M) Sdn Bhd v. Pemungut Duti Setem* [2010] 5 CLJ 109; [2010] 1 MLRA 317; [2010] 4 MLJ 596 as follows:

> [18] Now that this court has identified the transfer form as the instrument that is chargeable to stamp duty, the next step is to decide on whether the infrastructure fees are part of the consideration of the agreement and hence liable under Item 32(a). It is generally acknowledged that the real substance of a transaction may not successfully be appreciated by mere perusal of a document, or by a hurried gauging of the machinery adapted by the parties of the transaction. Only after going through the exercise of construing the document as a whole may the real substance of that transaction be known and thenceforth ascertain the respective parties' rights and obligations, and the correctness of the respondent's adjudication' ... C.C. Gallagher *Highmore's Stamp Laws* 4th edn, at p. 7, authored:
>
> > General Rules as to Stamp Duties
> >
> > *In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial* ... For instance, if a writing were headed by a recital that the parties had agreed to execute the promissory note thereinafter written, yet if in truth the contract set forth was not a promissory note, but an agreement of

A another character, the stamp duty would be not that of a promissory note, but of the agreement. The question, therefore, stamp or no stamp, and *if a stamp to what amount, is to be determined upon the real and true character and meaning of the writing.*

(emphasis added)

B **[16]** Further, the Court of Appeal in *Pemungut Duti Setem Malaysia v. Perbadanan Pembangunan Pulau Pinang* [2024] 8 CLJ 322; [2024] 5 MLRA 51; [2024] 6 MLJ 478 through a speaking judgment of Azizah Nawawi JCA (now CJSS), it was held that, whether the stamp duty levied on an instrument is correctly imposed by the respondent, the following matters must be taken into account before the court could come to a finding:

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(i) the name, title, label, or description given to the instrument/document (label) by the parties in question is not conclusive. The court is not bound by the label and may go behind the label to determine the true nature of the instrument/document;

D (ii) the court has to construe the instrument/document as a whole;

(iii) in addition to the instrument/document, the court may consider all relevant documents (relevant documents) so as to ascertain the true nature of the instrument/document;

E (iv) in deciding the true nature of the instrument/document, the court may consider all relevant circumstances regarding the instrument/document (relevant circumstances); and

(v) in considering the instrument/document, relevant documents, and relevant circumstances, the court determines the following matters:

F

(a) what is the true nature of the rights and obligations of the parties?

(b) what is the effect of the instrument/document, relevant documents, and relevant circumstances?

(c) what is the substance of the instrument/document?

G

Novation V Assignment

[17] The learned HCJ had stated that the novation agreement is in effect a form of an assignment. The learned HCJ held that a novation agreement between the parties was a transfer of property, specifically the transfer of a H loan debt and thus subject to stamp duty under sub-s. 16 of the Act and item 32(a) of the First Schedule of the Act.

[18] We found ourselves unable to agree for the following reasons.

Provision Of The Statute

I (i) Section 63 of the Contracts Act 1950 clearly states that a novation does not transfer property: The novation operates by extinguishing the existing contractual relationship, creating in its place an entirely new and independent agreement by consent;

(ii) Section 63 of the Contracts Act 1950, provides as follows:

> 63 Effect of novation, rescission and alteration of contract
>
> If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.
>
> ILLUSTRATIONS
>
> *(a) A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.*
>
> *(b) A owes B RM10,000. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for RM5,000 in place of the debt of RM10,000. This is a new contract and extinguishes the old.*
>
> (c) A owes B RM1,000 under a contract. B owes C RM1,000. B orders A to credit C with RM1,000 in his books, but C does not assent to the agreement. B still owes C RM1,000, and no new contract has been entered into.
>
> (emphasis added)

Textbook

(iii) *Halsbury's Laws of Malaysia* further clarified the position of s. 63 of the Contracts Act 1950 as follows:

> [120.524] General scope of the Contracts Act 1950 provision on effect of novation, rescission and alteration of contract
>
> *As a general rule, parties to a contract must perform their obligations under the contract However, under certain circumstances, a contract need not be performed, and the Contracts Act 1950 provision on the effect of novation, rescission and alteration of contract is one such circumstance, Under this provision the parties may substitute a new contract (commonly referred to as novation)*, or even rescind or alter it. In all these circumstances, the original contract between the parties need not be performed.
>
> In these situations, the parties obligations under the original contract are discharged.
>
> This Contracts Act 1950 provision is not limited in its scope to novation as it is understood under English law alone, but also covers situations where the parties have rescinded the earlier contract, by substituting a new one. If there is an intention on the part of both the parties to substitute a new contract, the old need not be performed, even if the new merely alters certain terms of the old. *The test basically is this: if a new contract is entered into by the parties, whatever its terms, the old contract is extinguished. If does not, however, cover a situation where the terms of the old contract are merely altered or varied, without a new contract in substitution of it being entered into. In such a case, the old contract, as altered or varied, remains in force.*
>
> [120.525] Novation: Substitute a new contract

A *Novation is a new contract; it extinguishes rights and obligations under the old contract for which the new contract is made*. For the operation of the provision on the Contracts Act 1950 on the effect of novation, rescission and alteration of contract, the party claiming such a relief must not only show the intention to novate or that the terms of the subsequent contract are so inconsistent with the former one as to
B imply that intention, but he must also prove that all the parties to the former contract have consented to the terms of the subsequent one.

[120.526] *Novation: Change in parties*

Novation does not always involve a change in the terms of the
C contract by the parties. It may sometimes also relate to a change or substitution of the parties to the contract. It has been held that when there is a change in the parties in a novation, the new agreement does not amount to an assignment of the rights of the parties.

(emphasis added)

D Case Laws

(iv) The distinction between novation and assignment is well established by many decided cases, such as:

(i) in *LYL Hooker Sdn Bhd v. Tevanaigam Savisthri KT Chitty & Anor* [1987] 1 CLJ 356; [1987] CLJ (Rep) 179; [1986] 1 MLRA 261;
E [1987] 2 MLJ 52; the then Supreme Court held:

> **Novation is a new contract. It extinguishes rights and obligations under the old contract for which the new contract is made**. Being a new contract, there must be consent by all parties and there must be consideration, and rights and
F obligations under it are not those transferred from the old contract which is already extinguished (see *Chitty on Contract*, Vol. 1, (1983 Ed), at paras 1315-1316).
>
> (emphasis added)

(ii) in *Housing And Development Board v. Lee Sem Yoong Sdn Bhd* [1987]
G CLJU 30; [1987] 1 LNS 30; [1987] 2 MLJ 204; [1986] 1 MLRA 678; the then Supreme Court explained the legal principle in regard to novation as follows:

> There is a distinction between novation and assignment. Novation has been defined in the *House of Lords* (1882) 7 App
H Cas 345 351 [1881-5] All ER Rep 651:
>
> > That, there being a contract in existence, some other contract is substituted for it either between the same parties or between different parties, the consideration mutually being the discharge of the old contract ...
>
I There is an annulment or discharge of one debt and the creation of a substituted debt in its place; in order to be effective, the debtor must be a party. Whether or not there is novation of a contract is a question of fact in each case, and

> the intention to do is a fact which must clearly be proved (Pollock & Mulla: *The Indian Contract & Specific Reliefs Ac*t, 9th Edition). *Novation is a transaction by which a new contract is substituted for one that has already been made. Unlike assignment, novation does not involve the transfer of any property at all. It comprises (a) an annulment of one debt and (b) the creation of a substituted debt in its place. (Re United Railways of the Havana and Regia Warehouses Ltd [1960] Ch 52, 84, 86*.

(iii) In *ALH Group Property Holdings Pty Ltd v. Chief Commissioner Of State Revenue* [2012] HCA 6, the High Court of Australia had this to say about the novation:

> [16] It is not without significance to the distinction between assignment and novation, to which reference will later be made, that each of the parties to the 2003 contract, Oakland as well as Trust, are parties to the Deed of Consent, along with ALH. *The recitals to the Deed of Consent referred to the 2003 contract and identified the property the subject of it. Recital C stated that Oakland "has agreed to consent" to Trust "assigning its rights and obligations" under the 2003 contract to ALH on the terms contained in the Deed of Consent*.
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> …
>
> [27] *Handley AJA was also correct to identify the rescission of the existing 2003 contract as essential to its novation*. "Novation" is a term derived from the civil law, Lord Selborne LC observed in *Scarf v. Jardine*, and therefore from Roman law. The term is applied to two classes of case: where the parties to a contract make a new contract, with new obligations, impliedly rescinding an existing contract; and, more commonly, to *tripartite agreements, where "the obligation of a third person is by express agreement accepted by one party to an existing contract with the consent of such third person and of the other party to the contract, in lieu of the obligation of such other party, who, by the new contract, is released from his obligation under the original contract"*.
>
> (emphasis added)

[See also: *Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)* [2022] 2 All ER 911; *Allchin v. Revenue and Customs Comrs* [2013] UKFTT 1998 (TC)]

Dictionary

(iv) *Black's Law Dictionary* (11th edn) defined "novation" as:

> *The act of substituting for an old obligation a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party*. A novation may substitute (1) a new obligation between the same parties, (2) a new debtor, or (3) a new creditor … Also termed substituted agreement …
>
> (emphasis added)

[19] Based on the above authorities, it can be deduced that:

(i) a novation agreement extinguishes rights and obligations under an old contract for which the new contract is made;

(ii) novation requires the consent of all parties involved, including the original contracting parties' and the incoming party, and results in the complete discharge of one of the original parties from the original contract;

(iii) in relation to loans, novation is a contract between the debtor-creditor and a new third party to the debt arrangement; and

(iv) novation is distinct from a transfer and an assignment.

[20] Coming back to the fact in our present case, let us examine the novation agreement, especially the important clauses of 1.2(a), (b), and (c):

(i) clause 1.2(a): NIKE Malaysia releases NEON from its obligations, duties, and liabilities under the original loan agreement as the "lender", and NIKE Malaysia agrees that it has no further rights against NEON under the original loan agreement;

(ii) clause 1.2(b): The appellant agrees to assume the rights, obligations, duties, and liabilities of the "lender" to perform in favour of NIKE Malaysia all such obligations and duties of the "lender" under the novated original loan agreement; and

(iii) clause 1.2(c): NIKE Malaysia agrees to perform in favour of the appellant all rights, obligations, duties, and liabilities as the "Borrower" under the novated original loan agreement.

[21] From the above, we can see that cl. 1.2 of the novation agreement clearly shows that the appellant assumes all rights, obligations, duties and liabilities of the original lender, *ie*, NEON, as if the appellant were a party to the original loan agreement.

[22] The learned HCJ found that the novation agreement did not constitute a novation, but rather merely a transfer of the rights and benefits to receive repayment of the disbursed funds. We find that, based on the authorities referred to earlier, this finding of the learned HCJ contradicts the explicit, agreed-upon terms of the novation agreement. This is clearly and unequivocally a mistake, as it contradicts the well-established principles of contractual interpretation.

[23] Further, we find that the terms of the novation agreement demonstrate that the appellant did not merely acquire rights to receive repayments. Instead, it assumed active, ongoing obligations originally borne by NEON. This indicates that the novation agreement was substantively a substitution of parties, carrying forward existing obligations and rights rather than transferring property or debts alone.

[24] Given the above, we are of the considered view that the novation agreement cannot amount to an assignment, conveyance or transfer of property in law.

[25] While contractual rights can generally be assigned from one party to another, obligations and liabilities cannot be assigned or transferred without the express consent of all original parties.

(See: *Resolution Alliance Sdn Bhd v. Binabaik Sdn Bhd & Anor* [2015] 5 CLJ 813; [2015] 3 MLJ 420; [2014] MLRAU 492)

[26] A careful reading of the novation agreement clearly indicates that both rights and obligations were intended by all parties to be substituted completely. Under established law, the simultaneous substitution of rights and obligations necessarily constitutes a novation. Therefore, we are of the view that there was no separate assignment of rights nor isolated transfer of obligations.

[27] It is our view that the novation agreement, properly construed, is strictly a novation-fully, extinguishing the old contractual arrangement and substituting a new one.

[28] The novation agreement was clearly intended and agreed upon by all parties to be a novation, fully extinguishing the original loan agreement and creating an entirely new contractual arrangement between the appellant and NIKE Malaysia.

[29] We are of the view that the mere presence of the term "transfer" in isolation cannot override the substantive legal character of the agreement as a novation.

[30] The fact that NIKE Malaysia now owes repayment of the loan to the appellant rather than to NEON does not imply a transfer or conveyance of property. It simply reflects the establishment of a fresh contractual relationship whereby the appellant undertakes all the previous lender's rights and responsibilities. We are of the view that because no property transfer or conveyance occurs, sub-s. 16(1) of the Act is plainly inapplicable. Thus, the High Court's reliance on sub-s. 16(1) of the Act to impose stamp duty is wrong in law.

[31] The learned HCJ also referred to the Federal Court case of *Tambun Mining* and said that the novation agreement is, in effect, a form of assignment.

[32] However, we find that the High Court's reliance on *Tambun Mining* (*supra*) was misplaced and must be viewed in its proper context. The Federal Court statement was made specifically in the context of discussing the transferability of certain obligations relating to liquidated damages (absent a novation agreement). It was not the Federal Court's intention to equate assignment and novation in any general sense.

[33] As a conclusion for this novation and assignment issue, we are of the view that the High Court's finding that the novation agreement amounted to an assignment and was therefore subject to a duty under item 32(a) of the First Schedule of the Act is legally unsustainable and thus warrants an appellate intervention.

Consideration

[34] We find that the learned HCJ also erred in finding that the novation agreement lacked consideration.

[35] The case law seems to suggest that consideration for novation does not need to be monetary. It can validly consist of the parties' mutual promises, such as the agreement to release one party from prior obligation.

[36] in *Danaharta Managers Sdn Bhd v. Melewar Leisure Sdn Bhd & Ors* [2008] CLJU 200; [2008] 1 LNS 200; 2008] 4 MLJ 448; [2008] 5 MLRH 87; [2008] 4 AMR 553, Rohana Yusuf J (later PCA) held that the consideration for the novation was the agreement by the plaintiff to release and discharge the initial borrowers from all claims in respect of the novated debts, the deferment or forbearing to exercise the plaintiffs rights against the defendants' guarantee of the initial borrower's debt and the time indulgence to resolve the novated debt by the restructuring agreements. These are all valid and good considerations, as per the definition under s. 2(d) of the Contracts Act, and a forbearance to exercise a legal right is a good consideration.

[37] Further, in the case of *Arab-Malaysian Merchant Bank Bhd v. Silver Concept Sdn Bhd* [2008] 9 CLJ 522; [2008] 6 MLJ 295; [2008] 3 MLRH 1; [2005] 5 AMR 381, Abdul Wahab Patail J (later JCA) upheld the validity and enforceability of a novation agreement despite the absence of monetary consideration.

[38] Given the above, we are of the considered view that consideration in a novation agreement arises from the mutual discharge and assumption of obligation. In the instance case, the mutual agreement to release NEON and substitute the appellant is valid consideration.

[39] For the reasons explained, we find that the HCJ's finding that there was no consideration for the purported transfer of the debt is predicated on the incorrect assumption that only a debt transfer occurred because there are no obligations to be transferred. As a result, the learned HCJ's conclusion that the novation agreement amounted to an assignment and was subject to a duty under item 32(a) of the First Schedule of the Act is unsustainable and devoid of merit.

Conclusion

[40] In the circumstances, we are of the view that the novation agreement is a true novation – not an assignment, conveyance or transfer of property. It extinguished the original loan agreement and substituted the appellant in place of NEON. As such, it does not fall within sub-s. 16(1) of the Act and item 32(a) of the First Schedule of the Act.

[41] We therefore allow the appellant's appeal with costs. As a consequential order, we hereby direct the respondent to stamp the novation agreement under item 4 of the First Schedule of the Act.

[42] As for costs, we order the respondent to pay costs of RM20,000 here and below to the appellant without the allocator.

[43] The decision of the High Court dated 6 November 2023 is hereby set aside.